

Handwritten Wills and the Couch Cushions that Hide Them

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No doubt, the basic scenario plays out every day across America. An elder loved one passes, and an adult child or children are left to deal with an estate and no plan in place — or at least no apparent plan. What to do with mom's comfy chair? How much is that old couch worth? Should we just donate everything to charity? Who decides? The oldest? The one living closest? Do we all get a vote?

Before anything gets decided about the couch (or any other furniture, for that matter), I suggest everyone take a breath and consider the recent case of Aretha Franklin's four kids... and definitely don't rush to divvy up everything and especially do not just get rid of the old couch!

Nearly five years after the Queen of Soul passed and, no doubt, many tens (more likely hundreds) of thousands in legal fees later, the fate of Aretha Franklin's estate was decided by a Michigan jury, which determined that a four-page "holographic" (i.e., handwritten) document in a notebook found stuffed under Aretha's couch cushion was her intended last Will.

No matter that the four kids had already long since mutually consented and arranged to have an agreeable cousin serve as a third-party neutral to administer the estate. No matter that the lack of a will had meant all four would share everything equally and that they'd come to terms with that. No matter that one of the four separate potential final will documents was several times longer, more detailed, found in a locked cabinet, and notarized! The jury's findings result in Clarence Franklin getting cut out completely and brother Kecalf, alone, receiving Ms. Franklin's \$1.1 million home and most of her "personality" (i.e., her physical stuff-including jewelry, furs, and numerous luxury cars).

Impossible to know for sure what Aretha had intended. In fact, according to a *New York Times* report, the trial judge overseeing the trial has ruled that portions of one or more of the earlier signed documents might still end up being incorporated into what the jury determined to be the final document. (Note: This can happen in certain circumstances when one deals more completely / thoroughly with the disposition of all that one owns in one document before creating another, which inexplicably makes no specific reference to replacing or substituting for the former document). So, despite having endured nearly five years of legal wrangling and a jury trial publicly airing the family's "dirty laundry" along with matters preferably kept private, the Franklin kids may yet be forced to endure additional delays as the lawyers face-off on potentially unresolved issues, and Clarence and the other siblings now receiving substantially less than the presumed 25%, are now forced to consider their potential appellate options, as well. Why leave such unnecessary heartache to your loved ones after you're gone? Consult a legal professional, and have it done correctly—and the way you want it—the first time.

And if you have recently lost a loved one — especially if you've been led to believe they had an estate plan in place (and doubly especially if the "plan" they told you about appears to differ substantially from the plan the decedent actually left behind (or the lack of a plan altogether), I would urge you again to consider the plight of the Franklins and rethink that couch donation . . . at

least until someone's had a chance to lift the cushions and run their hands through the frame.

(Epilogue: True, not-totally-unrelated, anecdote . . . I discovered a \$20 bill and a pair of Ray-Ban® sunglasses (sold on the spot for \$75) in the back of an abandoned couch acquired during a brief stint co-owning/operating a used furniture/carpet going concern more than 30 years ago. I didn't have to become an estate and trust litigator to appreciate the potential treasure trove those old cushions might unlock! "What's a 'treasure trove?'" you ask . . . and "How does one determine ownership of a treasure trove when discovered?" That's a whole other topic for another day. For now, happy couch-surfing!)